BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ELK GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016110439 ORDER FOLLOWING PREHEARING CONFERENCE, GRANTING MOTION TO CONTINUE, AND SETTING PREHEARING CONFERENCE AND DUE PROCESS HEARING DATES

On February 17, 2017, a telephonic prehearing conference was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Dina Harris, Attorney at Law, appeared on behalf of Elk Grove Unified School District. Parent, appeared on behalf of Student. The PHC was recorded.

Based on discussion with the parties at the PHC, the following order is issued:

1. Motion for Continuance of PHC and Due Process Hearing: This matter is currently set to begin hearing on February 28, 2017. At the beginning of the PHC, Parent requested to continue the matter because she wanted additional time to retain an attorney; she did not feel that five business days prior to hearing would be sufficient time for her to review Elk Grove's 52 proposed exhibits; and Student was scheduled to be privately assess in the areas of speech and language and occupational therapy during the next two weeks. Elk Grove objected to the requested continuance.

At the mediation on November 29, 2016, the parties agreed to continue the due process hearing to give Parent the opportunity to retain an attorney to represent Student in this matter. After receiving that continuance, Parent placed calls to three attorneys, who were listed on OAH's website. Per Parent, none of the attorneys returned her call. Parent took no further action to retain counsel. Parent has had ample time to retain counsel during the last two and one half months. Therefore, a continuance based on Parent's desire to retain counsel is not being granted.

However, the continuance request is being granted on the other two grounds put forth by Parent. English is not Parent's first language and as of the date of the hearing she has not received the 52 exhibits listed in Elk Grove's PHC statement. Under Education Code section 56505, subdivision (e)(7), Elk Grove is not required to provide Mother with those exhibits until five business days before the start of the scheduled hearing. Although Parent is able to

read documents written in English, she asserted that five business days would not provide her sufficient time to review and research the exhibits.

Additionally, Student is scheduled to be privately assessed in the areas of speech and language and occupational therapy within two weeks. Parent argues that the findings of those assessments are relevant to the hearing. As such, she wants to have the results of the assessments prior to proceeding to hearing.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Parent established good cause to continue the PHC and the due process hearing. Therefore, both the due process hearing and the PHC were continued. **No further requests for continuances will be granted unless the party seeking the continuance demonstrates extremely good cause.** This matter will be set as follows:

Telephonic PHC:

Date: March 13, 2017

Time: 1:00 p.m.

Due Process Hearing:

Date: March 21 - 23, 2017, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

Time: 9:30 a.m. on March 21, 2017, and 9:00 a.m. on all subsequent days, unless otherwise ordered by the ALJ.

2. Prehearing Conference Statement: Parent failed to submit a PHC conference statement prior to the PHC. Parent is ordered to submit a PHC statement prior to the schedule March 13, 2017 PHC. She is reminded that the PHC statement and any other correspondence must also be properly served on Elk Grove.

3. Exhibits and Witness List. In the interest of due process, the parties are ordered to exchange their evidence and witness lists no later than March 10, 2017 at 5:00 p.m. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the

hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties **are not** to serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

4. Other Matters: All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the PHC on March 13, 2017.

5. Settlement: The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled PHC and hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

Dates for PHC and hearing will not be cancelled until a letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ.

IT IS SO ORDERED.

DATE: February 22, 2017

DocuSigned by:
B. Andrea Miles
D9ECFFB6F6C9482...

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings